

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
FCC Seeks Comment on Adopting)	GN Docket No. 13-86
Egregious Cases Policy)	
)	

**REPLY COMMENTS OF
COLLEGE BROADCASTERS, INC.**

College Broadcasters, Inc. (“CBI”)¹ hereby submits its reply comments in the above captioned proceeding.² The primary issue of how the Commission’s indecency policy should deal with isolated or fleeting expletives or other explicit content is of great concern to many stations nationwide and the current and potential members of CBI.³

CBI member stations and the community of Educational Stations⁴ provide their local communities with a unique set of voices to address community needs while serving as an important educational resource for students across the country. A fleeting expletive policy such as the one articulated in *Golden Globes*, with a lack of clarity of what is and is not actionable and with the potential for enormous forfeitures (not to mention the cost of legal representation), unnecessarily puts these Educational Stations in a very precarious position. The very existence of each of these small, hyper-local broadcast stations could be jeopardized by a single complaint,

¹ CBI is a 501(c)(3) tax-exempt not-for-profit organization whose membership consists of hundreds of university, college and high school radio, television stations and other electronic media such as webcasters. CBI has represented its members before Congress, the Federal Communications Commission, the Copyright Royalty Board and other federal agencies and courts.

² In submitting its reply comments, CBI will not attempt to re-hash the entirety of the questions and responses already on file, but uses citations commonly found in other filings because they pertain to the distinct comments presented in its reply.

³ See GN Docket No. 13-86 at 1

⁴ CBI uses the term “Educational Stations” to include all stations which meet the definition found at 37 C.F.R. 380.21 (3-4). “(3) Is directly operated by, or is affiliated with and officially sanctioned by, and the operations of which are staffed substantially by students enrolled at, a domestically accredited primary or secondary school, college, university or other post-secondary degree-granting educational institution; and (4) Is not a “public broadcasting entity” (as defined in 17 U.S.C. 118(g) qualified to receive funding from the Corporation for Public Broadcasting pursuant to the criteria set forth in 47 U.S.C. 396.”

about indecent content, whether legitimate or not, due to these stations' often extremely limited resources. Two significant actions, which are legally defensible by the Commission, would move these stations a few steps away from the precipice while also allowing the Commission to conserve resources by avoiding unnecessary time consuming investigations and litigation.

First, the FCC should treat expletives in a manner consistent with *Pacifica*. This would reduce uncertainty for broadcast licensees, the public, and the Commission, and avoid both the constitutional issues and thus minimize the chilling effect that resulted from the *Golden Globes* enforcement policy.

Second, the FCC should use its recent policy statement concerning first time offenses in the case of William Penn University⁵ as the basis to adopt a similar policy regarding indecency violations (among other issues) by Educational Stations.⁶

I. The FCC Should Not Enforce "Fleeting Expletives"

The enforcement of a "fleeting expletive" policy is resource intensive, constitutionally suspect, creates a chilling effect, and unnecessarily puts existing Educational Stations in unnecessary jeopardy and potentially impedes the development of more of these stations.

A. "Fleeting Expletives" Policy is Unjustifiably Resource Intensive

Whether using the *Pacifica* or the *Golden Globes* policies, the Commission has expended considerable resources in determining whether or not to begin a formal investigation of an allegedly indecent broadcast based on complaints received. The licensees have also expended significant resources that might have been used elsewhere training producers and air staff, defending against complaints, hiring expensive legal counsel, litigating, and trying to modify

⁵ William Penn University and its KIGC-FM broadcast station (Docket No. DA 13-1074).

⁶ In response to this proceeding, CBI conducted a survey ("Survey") of Educational Stations. CBI will reference the survey in its reply comments and provide an addendum to these comments which provides information about the contents of the survey, responses received and methods used to qualify the comments received.

policies in order not to violate the enforcement policy du jour. In some cases the process has taken years to reach a conclusion.

For instance, WSUC, licensed to the State University of New York (“SUNY”), was found to have aired indecent material on June 21, 1992.⁷ The Commission issued a Notice of Apparent Liability (“NAL”) in that case of \$23,750. This forfeiture amount was later reduced to \$4,200, but it took more than six (6) years to reach this outcome, as the final Memorandum Opinion and Order (FCC 98-179) was adopted on July 28, 1998.⁸ This incident was post-1987 *Pacifica* and pre-*Golden Globes*.

In the WSUC instance, the licensee took prompt remedial action, apologized to the complainant and took the station off the air while instituting new operating procedures,⁹ but it still took the Commission more than six (6) years to reduce the forfeiture. There is little doubt that the Commission and SUNY *both* spent considerably more resources on this case than the amount of the eventual forfeiture. More telling is that the licensee took prompt action in response to the complaint, yet it had to keep litigating in order to reduce the forfeiture. A reasonable enforcement policy would have both recognized these factors earlier on and proposed a reasonable forfeiture to begin with given the nature of the station. In this case, the forfeiture reduction was not based on the stations’, or even the institutions, ability to pay. As explained further below, the FCC licensee can reduce the resources expended and reduce Educational Stations the potential of non-existence or sale.

The *Golden Globes* fleeting expletives policy has opened the floodgates to complaints from the public, without significant accompanying improvement in service to that same public. Indeed, in announcing this proceeding the FCC proclaimed that it had “reduced the backlog [of indecency complaints] by 70% thus far, more than one million complaints, principally by closing pending complaints that were beyond the statute of limitations or too stale to pursue, that involved cases outside FCC jurisdiction, that contained insufficient information, or that were

⁷ State University of New York (WSUC-FM), 8 FCC Rcd 456 (1993)

⁸ 13 FCC Rcd 23810 (1998).

⁹ *Ibid.*

foreclosed by settled precedent.”¹⁰ Adopting a more conservative enforcement policy, one which excludes action against an isolated or fleeting instance, would serve the public interest by providing licensees and the public greater clarity about what content is impermissible, thus bringing the number of complaints requiring action to a more manageable level and allowing FCC enforcement resources to be focused on the most significant areas of concern in a timely manner.

The Commission and broadcast licensees have had their resources taxed many times in the court systems. In the most recent Supreme Court ruling, it was clear that, if continued, the Commission’s Golden Globes-style enforcement policies were ripe for additional scrutiny. There is not fiscally prudent justification for continued enforcement under the *Golden Globes* when the Commission’s enforcement policies under *Pacifica* were never successfully challenged.

The slim resources of Educational Stations¹¹ should not be unduly taxed or the station’s very existence be put in peril while these important constitutional questions are furthered tested in the courts. When these constitutional questions come to bear again in a case, the proper means of settling these questions is with a party who not only has the will, but also the means of successfully challenging any enforcement policy. The fleeting expletives policy only aggravates the matter of prudent use of resources for both the Commission and Educational Station licensees as well as presenting significant constitutional issues.

B. Fleeting Expletive Enforcement Is Constitutionally Suspect, Has A Chilling Effect, Potentially Impedes The Development of More Educational Stations and Puts These Stations In Unnecessary Jeopardy.

¹⁰ See GN Docket No. 13-86 at 1.

¹¹ The Survey showed that nearly 50% of responding stations reported an annual budget of under \$25,000. The number of stations with budgets under \$50,000 is over 68%. 85% of self-reporting stations showed annual budgets of under \$100,000.

As demonstrated in the comments of KUCR¹² and SPLC,¹³ the lack of a bright line concerning what is and is not actionable concerning fleeting expletives has a chilling effect on many Educational Stations. The effect manifests itself in unnecessarily restrictive guidance and internal policies simply because the station knows that the repercussions would likely have a devastating impact on the station.¹⁴ Not only does the potential for a \$325,000 forfeiture have a chilling impact for existing stations,¹⁵ but such potential consequences are likely a strong deterrent for any institution contemplating an acquisition of a license through a purchase or application for a new station, such as in the upcoming LPFM window.

As the Commission itself noted in the LPFM proceedings,¹⁶ it has an obligation to “fulfill our statutory obligation to authorize facilities in a manner that best serves the public interest.”¹⁷ The fleeting expletives policy is an impediment to reaching the statutory obligation due to the potentially chilling effect of forfeitures and the fact that the size forfeiture would not be reduced to match the limitations of the *station*’s finances.

Educational Stations are, by nature, educational and experiential opportunities for students at primary/secondary schools, colleges, universities and other post-secondary degree-granting educational institutions.¹⁸ These stations generally operate with extremely limited finances and other resources. The vast majority of these stations are staffed primarily by student volunteers and funded by student fees rather than directly by the licensee. Many stations are not part of a degree program and some Educational Station host institutions do not even offer a related degree. Nonetheless, the stations contribute to the diversity in ownership, provide a medium for new speakers and minority-taste programming, and provide hyper-local service to the

¹² Comments Of KUCR (FM), filed June 19, 2013.

¹³ Comments of the Student Press Law Center, filed June 19, 2013.

¹⁴ The results of the Survey clearly demonstrate the impact of forfeiture orders on Educational Stations. (See Addendum).

¹⁵ Comments of the Student Press Law Center, filed June 19, 2013 at 4.

¹⁶ *Creation of Low Power Radio Service*, Report and Order, 15 F.C.C. Rcd. 2205 (2000), et al.

¹⁷ 15 FCC Rcd. 19208 (2000).

¹⁸ Despite its name, CBI does have members who meet the definition of Educational Stations which are licensed to entities other than colleges. The results of the Survey include responses from both members and non-members and stations which are not college stations who meet the definition of “Educational Stations”, including some who are likely to file LPFM applications.

community, often through live DJs spinning music from a diverse library of native media and not from a tightly limited, computer generated list of songs to play. Educational Stations have often historically seen their mission as including coverage of events on a campus and in the community, supporting a marketplace of ideas by providing a platform for discussion of issues and ideas. In doing so, they engage a wide range of participants, whether in the studio or on location—some of whom may not be familiar with broadcast protocols. The nature of this programming—live, unpredictable, and at the core of First Amendment ideals—puts stations at risk under Golden Globes. The fleeting expletive enforcement policy threatens not only the very existence of these stations but also the ability produce creative programming, which is often very edgy; of its DJs to curate playlists on the fly rather than through computer generated, non-responsive programming; and of the station to uniquely to serve the public interest through diverse programming seldom found on other types of stations, which are often not as responsive to local community needs.

C. One Size Does Not Fit All with Respect to Enforcement.

There is no argument that the Commission must enforce the statute as interpreted by the courts. The Commission must also take into consideration the intent of the enforcement action, the resulting impact on service in the public interest, and the development of Educational Stations as part of its commitment to the preservation of new voices, hyper-local content , public service and more under Section 503(b)(2)(E).

The intent of enforcement should be to deter stations from continued behavior which violates applicable laws, regulations and court precedents. Ideally, the outcome of enforcement not only provides the desired results, but also will help to clarify what falls within and outside the bounds of what is acceptable. Unfortunately, as demonstrated in the comments of others, particularly with respect to audio broadcasts, there is no bright line of what is actionable and what is not. Experienced commercial broadcasters have trouble in determining what is actionably indecent or profane. Inexperienced broadcasters at Educational Stations must rely upon their guidance in training, often by their peers, who are not seasoned professionals. Even the presence of a faculty adviser, often with principally academic responsibilities outside of the station, does not provide

much more protection for these stations as many faculty advisers are experts in other disciplines and are not trained in Commission rules and regulations. Even at Educational Stations where there are well trained professionals, the potential for violations runs high and the chilling effect of a lack of a bright line comes into play. Nothing can mitigate the unintentional error of students or even community volunteers in either situation.

Professionals make mistakes. Students are much more likely to do so at Educational Stations, particularly given the limited resources available. Indeed, making mistakes is an inescapable element of the educational process. The demonstrable fragile nature of Educational Stations due to their limited finances and overall importance in the mission of the licensee, their nature as learning opportunities, the opportunity to provide new and different voices, the Commission must understand that its forfeiture orders must account for the nature of the Educational Station licensee, and has done so already in the case of KGUI.¹⁹

To be clear, a \$325,000 NAL, or even a \$5,000 NAL, has a magnitude of significance on an Educational Station far greater than that of a most of those with a commercial licensee. In fact, the licensee of the Educational Station is far more likely to take extreme preventative and corrective actions in order to prevent and minimize the potential or actual enforcement of an NAL rather than to risk the resources expense required to litigate.

Although CBI believes that even the 1987 Pacifica enforcement regime is questionable, it also believes that anything less than reverting to that standard puts Educational Stations in unreasonable jeopardy, not only from the Commission, but also from their licensees. The Commission itself has recognized this in the KGUI case AND, as a number of “student” stations have been sold in recent years due to economic concerns: “We are concerned that imposing forfeitures at levels that are likely to exceed the annual budgets of student-run radio stations could exacerbate this trend, foreclosing opportunities for the education, training and real-world experience of current and future student volunteers by these stations.”²⁰

¹⁹ Docket No. DA 13-1074 (May 13, 2013)

²⁰ Id. at 3, ¶ 5.

The precedent established by the Commission in its policy statement concerning first time offenses in the case of William Penn University-- limited to stations with only students and at most, a “faculty advisor”²¹ it does set an important precedent in that the Commission does recognize the value of student stations (and extended, Educational Stations) and acknowledges that actions against these limited and valuable contributors to the marketplace of ideas through broadcast media should be consistent with the ideal and “obligation to authorize facilities in a manner that best serves the public interest.”²² That obligation should not stop with the authorization of such facilities, but should extend to the ability of such facilities to continue to provide those services. Failure to recognize the differences between Educational Stations and other stations is counterproductive and produces a chilling effect on existing Educational Stations as well as those considering an entry into the arena for licensed broadcasting by educational institutions. The general concepts applied in a limited manner in the KGUI case are more broadly applicable here as well.

²¹ DA 13-1074, at fn 2:; “[S]taffed completely by student volunteers, rather than partially or predominantly by students. Stations that employ any professional staff, other than a faculty advisor, will not qualify for a consent decree under the policy announced today, even if they meet all the other criteria.”

²² 15 FCC Rcd. 19208 (2000).

II. The FCC Must Use Its Recent Policy Statement Concerning First-Time Offenses In The Case Of William Penn University As The Basis To Adopt A Similar Policy For Educational Stations .

The KGUI case represents a clear example of the FCC “looking out for the little guy”²³ and recognizes the value of student stations as defined in the policy order. With respect to the issue at hand, that general principal should not be lost with respect to the larger community of Educational Stations.

In the policy, the FCC said “There are nearly 3,800 licensed NCE FM radio stations in the country. Of these, fewer than 500 are student-run stations.”²⁴ The policy statement further clarified, via a footnote that it believed that a student station is not one that contains any volunteers or others, with the exception of a “faculty advisor”.²⁵ While CBI does not agree with the numbers presented by the FCC in the KGUI case,²⁶ CBI accepts and applauds the general principal adopted, that student stations should be able to file basic paperwork in order to remain a licensee and not face crippling or more likely station killing forfeiture orders and instead, be allowed to enter into a settlement decree. While CBI disagrees with the overly strict limitations in that case, particularly with respect to “staff advisors”, etc., it does see a distinction which should be made in considering the enforcement policy with respect indecent material.

Oversight by professional staff should be enough, in most situations, to not provide overly protective enforcement policies for Educational Stations (as opposed to the “student

²³ DA 13-1074 at 1.

²⁴ *Id.*

²⁵ For purposes of this policy, a student-run station is a radio station licensed as an NCE station to an educational institution or an entity under the control of an educational institution and which is staffed completely by student volunteers, rather than partially or predominantly by students. Stations that employ any professional staff, other than a faculty advisor, will not qualify for a consent decree under the policy announced today, even if they meet all the other criteria.” The definition of “faculty advisor” is unclear and seemingly precludes staff advisers who might have other duties as well, such as advising multiple student organizations or other non-station specific administrative (non-teaching) responsibilities.

²⁶ The FCC cites nothing to support the number of “student-run” stations which meet the criteria set forth in DA 13-1074.

stations” defined in the Policy Order), but a prudent use of discretion should still be employed when assessing forfeitures in cases listed in the KGUI policy for Educational Stations because of the limited fiscal resources of these stations.

Indecency is a different animal due to the fact that there is no bright line definition of what is and is not actionable, as opposed to oversight in compliance with the submission of reports and materials or public notice. There are no established cycles or deadlines with respect to expletives. When indecent material is aired, there is no way to unring the bell. Whether a station is a “student station” or an Educational Station, the principals applied in the Policy Statement should be applied here as well, particularly given the context and magnitude of the situation. The importance of the administrative and reporting paperwork covered in the Policy Statement are not to be under taken lightly, or understated, and the Policy Statement makes that clear. The Policy, as stated encourages consent decrees and a voluntary contribution to the United States Treasury considering “the totality of circumstances, including giving appropriate consideration to the station’s finances with respect to reducing the base forfeiture amount significantly.”²⁷

In issuing the Policy, the FCC stated that “allowing a forfeiture reduction for a first-time documentation violation of the type described below in exchange for a consent decree that includes a compliance plan will promote, rather than undermine, compliance with the Rules.”²⁸ There is seemingly no good reason to not apply that same logic to Educational Stations with respect to first-time violations of regulations regarding expletives.

Indeed, many of the reasons given for providing student-stations with some latitude exist at Educational Stations as well.

“They rely on student volunteers for all management, operational and programming functions and provide those students with training and experience in radio programming, production and station operations as a supplement to the educational curriculum of the school”

²⁷ *Id.*, at 2

²⁸ *Id.* P4 at 8

“Student volunteers at these stations are young and unlikely to have had any work experience in regulatory compliance matters, particularly those involving the FCC requirements to which NCE stations are subject.”

“As students leave the school or assume other responsibilities that conflict with their time devoted to station activities, new student volunteers must be recruited and trained on an ongoing basis by the remaining students, often without any professional oversight other than that provided by faculty advisors.”

“Faculty advisors typically have limited time available to devote to the student-run radio station due to their other educational responsibilities. Likewise, the student volunteers who manage the stations are also managing their own course loads. Adding to these challenges, student-run stations frequently operate with very limited annual operating budgets, in some cases less than the Commission’s base forfeiture amount for a single public inspection file violation.”

All of these statements can be applied to the vast majority of Educational Stations as well. In adopting the Policy, the Commission substantiated its action by noting that the “Bureau’s discretion to so act in potential forfeiture cases is consistent with our statutory mandate to craft appropriate sanctions for violations “as justice may require”. The Policy further clarified that the goals were consistent with the statute.²⁹

The Commission also noted that a number of educational institutions have decided sell their NCE radio stations.³⁰ Additionally students have lost access to NCE airwaves due to lease agreements.³¹

²⁹ *Id* at 6

³⁰ *Id* at 5. “At the same time, increasing numbers of educational institutions facing daunting fiscal challenges have made the difficult decision to sell their valuable NCE radio stations. For example, in recent years, the University of San Francisco, Duquesne University in Pittsburgh, Barry University in Miami and Bard College in the Hudson River Valley have sold their stations.”

³¹ See <http://radiosurvivor.com/2011/07/28/delving-into-wjmf-s-move-off-fm-as-college-radio-station-makes-way-for-wgbh-s-99-5-all-classical/>

“In addition to the woes at KTRU, KUSF, and WRVU, several other college radio stations left the FM dial this year. Brown Student Radio (BSR) [lost its part-time lease](#) of 88.1 FM in Providence, Rhode Island in August when the frequency’s owner, the Wheeler School, decided to [lease its entire broadcast day](#) to Rhode Island Public Radio. This also meant that Wheeler School students lost their access to the terrestrial dial, as their station was taken online-only. Also in Providence, Bryant University took its student station WJMF off 88.7 FM [in order to forge a partnership](#) with public radio station WGBH out of Boston. As part of a revenue-sharing deal, WGBH is airing its classical station WCRB over the old WJMF frequency.”³²

The only difference between student-run stations and Educational Stations in most instances is that the station might have a staff, rather than a faculty adviser, who likewise often has numerous other responsibilities associated with their employment and some of these stations allow some community volunteers to supplement the stations programming in order to offer a better service to the community of license.

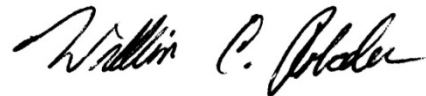
III. Conclusion

CBI agrees with the vast majority of those who have submitted substantive comments in this docket, in that, at minimum, the enforcement policy should be reflective of the policy applied under Pacifica due to the constitutional concerns, the chilling effect and the fact that mistakes happen. Further, CBI urges the commission to take a balanced approach to enforcement when it comes to Educational Station with a history of compliance. These two

³² See <http://radiosurvivor.com/2011/12/31/2011-the-year-that-college-radio-fought-back/>

steps, taken together, would serve the public interest and provide these important and extremely fragile stations (and potential future stations) with the appropriate amount of breathing room in their endeavors to educate and serve the community.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "William P. Blader". The signature is fluid and cursive, with a long horizontal line extending from the end of the name.

Executive Director
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Survey Addendum

Station Budgets

Nearly 50% of responding stations reported an annual budget of under \$25,000. The number of stations with budgets under \$50,000 is over 68%. 85% of self-reporting stations showed annual budgets of under \$100,000.

Would the station meet the criteria of “student run” as defined in Docket No. DA 13-1074.

Respondents were asked questions to determine if they would seemingly fall under the category of a student run station. 60% of those responding would fail the test.

The first “test” applied was the question, “Is your station licensed as an NCE station to an educational institution or an entity under the control of an educational institution?”

Only two stations said no. Both of them would still be qualified as an Educational Station under the definition as defined in C.F.R 380.21 (3-4) as one is licensed to “The Student Association, Inc.” and the other has a commercial license, however both licensees are non-profits. Both are completely staffed by students, but neither would seemingly be considered “student run” by the Commission.

Next, CBI asked “Is the station staffed COMPLETELY by student volunteers? To be very clear “student volunteers” includes those who receive educational credit or work/study stipends for work at a student-run station, as well as students who receive no credit or stipend. If your station has any volunteers who are not students, other than a faculty adviser, you must answer the “No”.

The self-reported data shows that 60% of stations answered no to this question. The stations which said no were allowed to provide a response as to why they should still be considered a student station by the FCC. A representative sampling of their responses is included below.

Our students are on air in every aspect of our programming.

We have one former student that still does a show, he's a volunteer. While he's not a student anymore he was at one time and I don't see why one non-student should exclude you from being considered a student run station. It seems unfair an entire organization should be penalized for having a few or even one non student volunteer.

Students hold all positions of management and operates 70% of the active air shifts. As a community service we allow some members of the community (faculty, alumni, community volunteers) to contribute programming.

The day to day operations are run by student managers in academic internships. The broadcasters are overwhelmingly students enrolled in an academic course. While we do allow community volunteers to fill some of the openings in the schedule, they are under the employ of the student managers. The community volunteers are hired and trained by students.

We have 1 community volunteer, the rest (+/- 70) are student volunteers. We specifically limit the maximum number of non-students at 3. We consider ourselves student run.

No paid non-students on staff (except chief engineer). Day-to-day management performed by team of students. Independent Board of Directors (FCC licensee) is 55% students and board bylaws require 50% student attendance to reach quorum at meetings. Budget appropriations and other monies come from student activities fees (controlled by student government) rather than through university's general fund or departmental resources. All new hires must be students and all non-student volunteers on staff are former students. Station is recognized as an official "Student Activity Organization" by the university and is, thus, required to comply with all rules and policies associated with that designation, many of which are intended to protect student interests and ensure student participation and leadership.

All of the persons who receive stipend or credit for work at the station are students. The students are the leaders who train the rest of the staff, which is completely composed of volunteers who receive no compensation for their activities associated with the station.

The vast majority (approximately 90 percent) of our staff is comprised of student volunteers. ALL of our staff positions are filled by student volunteers; we do have a few non-student volunteer disc jockeys/show hosts from our university's faculty/staff and the community.

We are licensed by and housed in a public school. Any adult helpers are volunteer and they are outnumbered by students who run the station from 8-4 daily. Most of our production is created by students. New music is controlled by and decided upon by students.

The station is run primarily by students (paid and volunteer) and all leadership roles are filled by students. A student general manager has ultimate authority. We have a staff adviser and about 12 alumni DJs (out of 120 on staff).

Students do not maintain the public inspection file. We follow Texas Education Agency TEKS set for Advanced Broadcast Journalism. Curriculum is aligned with TEKS, therefore time constraints prevent a large part of the administrative functions from being completed by students.

While we do have several DJs who are college staff or community members, all of the leadership positions within the station are fulfilled by students. All non-janitorial work maintaining the station is performed by either students or our faculty adviser, and ultimately it is the student who control the organizational structure of the station.

All voting members of the station's board of directors are students. Approximately 85% of the station's active staff are students.

All staff managers are students. The positions of Program Director, Assistant Program Director, Music Director, and Public affairs Director are all student staff. Community volunteers serve at the discretion of student staff and may only act as DJ's. They have no responsibility nor authority for administrative or management decisions.

Our station should be considered student-run for several strong reasons. One, students are responsible for more than 90% of the weekly programming hours broadcast by our station, an FCC licensed NCE. We operate 24/7 and never automate, There is always at least one student present in the station at all times, even during those few hours when a non-student volunteers may be on the air. Second, students are 100% responsible for the daily operations of our station. Non-student volunteers have no role in station governance. In fact, university policy clearly states that non-student volunteers are prohibited from participating in station decision-making or governance. Third, of the handful of non-student volunteers involved with our station, a majority of them are associated with the university, either as faculty, administrators, staff, or members of the campus priest community. Their involvement with the station is not for personal enjoyment or ego, but rather to further the mission of the university. In addition, these non-student volunteers are often dependent on students for the successful execution of their programs. For example, with out a student board operator and/or audio editor, most shows hosted by non-student volunteers would never air. Thus, students are essential to virtually every single programming hour on our station. Fifth, if something goes wrong at the station, the students are the ones ultimately held accountable. The university, the station's license holder, expects that students will step in and correct any problems caused by a non-student volunteers before they go over the air. That is one reason there is a

student at the station at all times. Finally, our license holder, the university, considers the station to be student-run. If the license holder holds this view, then the FCC should as well.

Our day schedule and part of the evening schedule are staffed by student volunteers who make their own decisions about day to day programming and are responsible for our other duties supplying DJ and audio support for all school functions. Evening slots NOT hosted by students are filled by community volunteers and/or canned programming. NONE of the staff (including the manager) are paid for their duties - we are 100% volunteer with ZERO monetary support from the School District that owns the station.

Students hold all decision making and leadership positions - two full time staff serve as advisors and the other is an engineer.

We have one faculty member who has done a special offering of holiday music after the end of the fall semester up until Christmas each year; he's done this since 1989 and will continue until he retires after his 2014 program. Other than that sole example, our bylaws state that one has to be an enrolled student at our university to take part in the radio station's operation.

The majority of staff are student volunteers.

KBGA is staffed by paid student volunteers. We operate as a non profit under a board of directors. KBGA makes a distinction between paid staff and volunteer DJs. As an entity of the University of Montana, in order to be a paid staff member the individual must be a student of the University of Montana. DJs, however may or may not be a registered student. All decisions pertaining to the operation and maintenance of the station fall under the responsibility of the paid staff. In addition, the majority of our operating budget is paid for in student fees. It is for these reasons that we and the university consider KBGA to be a student owned and operated non-profit radio station.

The executive board and 95% of the station staff and on-air announcers are student volunteers. We have a couple of faculty that volunteer as on-air announcers, and one dependent of a faculty member. Other than those exceptions, we meet all the criteria set forth by the FCC. It would be odd that 4 people out of 100 make us ineligible for this criteria.

KCLC has some, very limited, community volunteer participation. Currently, that represents 12-15 hours a week performed by people who have specific community affairs or specialty weekend programming. The remainder of the time the station is staffed by students.

Despite the presence of some non-students on the volunteer station, WUVT is clearly a student radio station operated to provide service to the local community and a valuable co-curricular, educational experience to Virginia Tech students. WUVT was founded by students, built with student activity fees, requires station management to be enrolled VT

students, and has a very large majority of all of on air as well as almost all station operations positions filled by students. Alumni and community volunteers contribute at the discretion of student management. Just as the student editor of the student newspaper may decide to publish an guest op-ed column from a faculty member, the student leaders of WUVT choose to allow qualified community members and alumni to play select supporting roles to the primarily student staff. One station staff position (out of an approximate 15 staff positions in addition to two top student leaders,) the station librarian, has traditionally been held by an alumnus in the interests of continuity and "finding stuff." The student leaders of WUVT believe strongly that: 1) involvement of some on-air community volunteers plays a valuable role in educating students about the station's community service goals and in helping students network with the community at large. For example, Mr. Andy Morikawa is the former, long-time, executive director of the Community Foundation of the New River Valley. After retiring from the CFNRV, he approached the student leaders of WUVT about hosting a weekly talk show with community leaders on community topics. Mr. Morikawa's connection to WUVT opens up new involvement and networking doors to the students at WUVT as well as providing quality local programming on topics that might otherwise be minimized by other media sources. 2) Virginia Tech's WUVT alumni function as advisers and mentors in an educational environment that unfortunately lacks a dedicated professional broadcast adviser for the station. Beyond the station's official VT faculty adviser (who at various times has been a Communications professor, a Geography professor and is now a former English professor,) WUVT alumni stand ready to advise the station's student engineers, student on-air talent, student operations management, and student leaders when asked. Some WUVT alumni continue to apply for open on-air slots. Without the involvement of those alumni, the student experience at WUVT would be less rich. Having some trained, non-students involved in the station also helps the student management plan schedules that maximize a live, rather than automated, presence on-air during school breaks when few students are in town. The student leaders of WUVT value the community ties and educational opportunities made possible by the inclusion of some non-student volunteers and do not believe that it makes WUVT any less of a student-run NCE station.

We use former students on weekend and overnight shifts when students are not allowed to be on campus unsupervised.

The board of directors is entirely enrolled students. With a staff of over one hundred there are less than 20 community volunteers who staff the station on weekends when students are not as readily available. Community members have zero leadership positions and are volunteers. Rarely would anyone consider WMUL-FM anything but a student radio station. The entire budget for the radio station comes from student fees.

We have one faculty member (myself), and no volunteers who are not students. Staff is made up of all unpaid students, receiving credit.

One part time administrator for a station that is staffed with community volunteers in the summer and students during the semesters. Student board still sets the tone for the whole

year, controls the budget through student government. Students may still remove any staff members not in accordance with their policies.

We have two community volunteers. One who comes in Saturday morning and another who comes in Sunday morning. Everyone else is a student at Mount Union.

We have a small number of "community DJs," most of whom are well-known alumni of our station or figureheads in the local music community. They sit in with a student DJ at all times during their shows, but they are an inclusive part of our station. We also have a part-time engineer on our staff, in addition to the staff advisor, who assists students in station operations that also lead me to select 'no.' Still, the vast majority of all station activities are lead by students, and as such we refer to WUOG as a student run station. They are behind every decision and action, even if made with someone that is a non-student. Training, programming decisions, scheduling, etc. are all handled and controlled by students.

Student managers with a faculty advisor and one full time manager (an ONU graduate), Station is on year round.

Students are only paid during the non-academic periods (summer, winter break, spring break, Thanksgiving). They are not paid during the academic year. No community volunteers are involved.

We have two former student volunteers who have obtained jobs at Radford University, and because of their current affiliation, we have allowed them to keep a weekly one hour on-air shift. They operate the exact same way as our student volunteers, and are only allowed to be volunteers because of their current affiliation and prior relationship with the University.

We are student operated six days a week. On Sunday we have adult community volunteers on the air. Otherwise, all on-air personnel are high school students who get a class credit for their work.

Students account for 95%+ of the content broadcast on WJMU. I answered "no" to the previous question based on the fact that we have three non-student DJs - a professor who runs a weekly Spanish language program, another faculty member who hosts a classical guitar program, and a community member who hosts a weekly blues show. The programming these non-student individuals account for averages less than 5 hours a week.

The Impact of a Fine for a One-Time, Single Utterance of \$32,500.

Finally, CBI asked stations to respond to the question, "What impact would a \$32,500 fine from the FCC have on your station?"

It is very clear from the responses that such a fine or forfeiture would be devastating to most stations. CBI must also take a moment to clarify that it only asked about the fine and not the other potential consequences, such as how much it would cost to defend a claim of a violation of the rules, or the likelihood of a notice of apparent liability or forfeiture causing the licensee to question the risk of continuing to operate the station or its return on investment. Nor did CBI ask the respondents to consider other factors which could impact their operations or continued viability, which likely results in an under-reporting of the potential impact. While some respondents did address some or many of these factors in their responses, many others did not. Regardless, the respondents clearly demonstrate that a fine at this level would be ruinous and severely impact the ability to provide the public with community responsive programming resulting in a reduced public benefit.

Sample responses to the question, “What impact would a \$32,500 fine from the FCC have on your station?” are provided below.

It would devastate us. We would be in serious trouble.

Likely push the University to consider possible sale of the license.

This amount represents the station's budget for maintenance and operating costs for an entire school year.

There is a good chance that we may not be able to operate at all as this is almost two years of our budget. We wouldn't be able to pay any bills or belong to organizations, go to conferences, pay our staff anything, get equipment fixed, pay our engineer, promote fundraisers..I don't think we would be broadcasting.

Our annual budget is \$8,500. A fine in this amount would have to be paid by the institution, whose management would assuredly shut the station down due to budget concerns.

The fine would be a serious detriment to our station. In addition to the fine, the administration at our university would likely consider inflicting consequences or shutting down our station in the case of such an event.

A \$32,500 fine would exceed our station's annual budget and would likely have to be paid by the university itself. This would greatly jeopardize the continued existence of our station.

It would shut our station down. We do not have that kind of money for a fine.

As the stations are owned and operated by a small community college, a fine of this magnitude is twice that of the Broadcasting Department annual budget. This budget funds a two-year associate degree curriculum for instruction, two FM radio stations and a PEG cable channel serving portions of 17 NC counties. It would not only devastate the department, it would also wipe out numerous accounts in other areas of the college.

Off the air after 11 years, in an instant. Our cumulated budget after 11 years is FAR below this amount.

It would compromise the entire operating budget for this station.

Our station would likely shut down. We have an annual budget of less than \$3000, and while the college is certainly supportive of us, I don't think they would let something that costs this much continue to exist in the fashion that it does now.

We would not be able to pay this fee. We would have to shut down and the University would not ever consider allowing a student radio station on campus.

This would be over 100% of our annual operating budget. It would silence the station and also do serious damage to our small university.

It would seriously impact the operating budget of the the station to such an extent that it would endanger its very existence.

With a fine of this magnitude, WOAS would cease to exist after 35 years on the air.

It would be detrimental to our continued operation due to the financial strain and negative exposure.

This fine of \$32,500 is more than our budget and we would have to request funds from the University to pay for this station. By doing so, there is the potential of the University pulling the license thus ceasing opportunities for students to grow in leadership, knowledge in the broadcast industry, and networking.

Given that such fines are imposed per utterance, one song where it to contain two or more utterances could potentially bankrupt the station. As the university where we operate is experiencing budgetary cuts, it is unlikely that they would come to our aid if such fines exceeded our savings and budget. In effect, it could put an end to our station.

It would effectively shut us down. We would be unable to pay the fine from our operating expenses, and I am not sure the college would continue to support our endeavors if they were made liable for a fine of this size.

This fine amount is approximately 7 times our annual operating budget. Our university has been dealing with tight budgets ever since the financial crisis in 2009. There are no extra funds anywhere. If such a fine were levied against our station, the university would likely shut us down and it would be the end of the station.

\$32,500 is more than the station's annual budget. It could cripple the station's normal operations for two years or more. In a worst case scenario, it could cause the licensee to shut down a student station that is embraced by the local community and has a venerable, 65 year-long history of student management.

We would have to shut down

A \$32,000 fine would shut down our station in the blink of an eye, no doubt about it.

It would likely shut us down, ending the program.

Nearing the gravity of an extinction level event.

Would be the end of our station. That fine represents roughly 70% of our operating budget.

A fine of that size would shut down the station because we would not have enough money in our budget to operate the station.

A fine of that size would likely lead the administration to sell the license and abandon radio entirely.

It might well cause our station to be put up for sale.

That's more than 7 times the amount we are budgeted to operate the station. As a converged media organization a fine of that size would also impact our newspaper, yearbook and student media overall--so far more reaching than just the radio station.

It would be entirely likely that the University would force us to shut the station down.

It would be devastating. A single infraction could shut the station down, as the cost of the fine is more than five times our annual budget.

We would probably have to cease operation.

Qualification of the CBI Survey

Survey Was Open to All

The survey was made available to all identified Educational Stations in the CBI database, via email from our database. Membership was not required; all identified stations received an invitation to respond. CBI also posted a link to its various email lists, and recruited participants via Twitter and Facebook.

CBI received more than 100 responses. Given the timing of this procedure³³, CBI is not surprised by the number of responses, however is impressed by the broad scope of respondents as illustrated below.

In developing comments for inclusion in this addendum and the reply comments, CBI qualified each response as a station which would meet the criteria of an “Educational Station”, deleted duplicate responses from the same station and also removed responses from those it could not verify as those with a legitimate interest in the matter.

Nature of Qualified Respondents

As CBI has learned through its almost two decades of experience in working with and representing student stations, it is extremely difficult to try to categorize Educational Stations as they operate under a number of institutional structures with highly different principals and goals. The survey helps to demonstrate this fact and this is a very strong indication that the Commission should consider its recent Policy Statement to be overly limited in scope with respect to enforcement, particularly with Section 503(b)(2)(E) of the Act in mind and the definition of “Educational Stations” as defined in C.F.R 380.21 (3-4).

³³ The survey was conducted in late July, which is likely the worst possible timing to receive responses from Educational Stations, but the timing was predicated by the deadlines imposed by the Commission’s inquiry.

CBI has received responses from members and non-members who meet the basic criteria under C.F.R 380.21 (3-4) including high school stations; those intending to file LPFM applications; a station operating on a leased HD frequency; class D stations; at least one station licensed to the student government; one licensed to the school but not on a reserved frequency and not licensed as an NCE; a share time facility; and a daytime Class D AM station.

The survey represents responses from more than 10% of those the FCC claimed, without qualification, as the number of student run stations. CBI qualified respondents to the survey represent a broad spectrum of stations who might or might not qualify as a student run station under the Policy Statement, but each and every respondent would appear to meet the criteria under C.F.R 380.21 (3-4). CBI makes this representation to make it clear that its reply comments represent a broad sampling of stations which has been filtered using specified criteria. CBI welcomes any Commission inquiries concerning the nature of the survey or the reported data.